



DOCKET FILE COPY ORIGINAL

STATE OF DELAWARE  
PUBLIC SERVICE COMMISSION

861 SILVER LAKE BOULEVARD  
CANNON BUILDING, SUITE 100  
DOVER, DELAWARE 19904

TELEPHONE: (302) 739 - 4247  
FAX: (302) 739 - 4849

December 15, 1999

Magalie R. Salas, Esq.  
Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**RECEIVED**

**DEC 16 1999**

**FCC MAIL ROOM**

Re: *Petition of Cellco Partnership d/b/a Bell Atlantic Mobile for  
Designation as an Eligible Telecommunications Carrier,*  
CC Docket No. 96-45  
**COMMENTS OF THE DELAWARE PUBLIC SERVICE  
COMMISSION**

---

Dear Madam Secretary:

On September 8, 1999, Cellco Partnership d/b/a Bell Atlantic Mobile ("Cellco") submitted a petition to the Federal Communications Commission seeking designation as an eligible telecommunications carrier ("ETC")<sup>1</sup> for a service area covering parts of Maryland and the entire State of Delaware. In its petition, Cellco asks the Commission to grant it such ETC designation for Delaware because Cellco is a common carrier not generally subject to the jurisdiction of the Delaware Public Service Commission. *See* 47 U.S.C. § 214(e)(6), *as added by* 111 Stat 2540 (Dec. 1,

---

<sup>1</sup> *See* 47 U.S.C. § 214(e)(1)-(6).

1997). The Commission has requested comments on Cellco's petition. DA 99-2544 (released Nov. 16, 1999). These are the comments of the Delaware Public Service Commission ("Del PSC").<sup>2</sup> They will focus on two areas. First, they confirm that the Delaware General Assembly has, for almost two decades, withheld from the Del PSC general regulatory jurisdiction over cellular CMRS providers, such as Cellco. Second, they will outline what actions the Del PSC has undertaken in designating a wireline ETC (Bell Atlantic-Delaware, Inc.) and in implementing the Commission's federal universal service Orders. In particular, the comments will summarize the amount of Lifeline and Link-up support the Del PSC has authorized for an ETC to offer in Delaware. The Del PSC provides such information in light of the directive in section 214(e)(6) that any designation of an ETC by the Commission must be made "consistent with applicable Federal *and State law*." (emphasis added).<sup>3</sup>

1. The Del PSC's Historic Lack of Regulatory Jurisdiction over Fixed and Mobile Cellular Wireless Services

By state statute, the Del PSC holds exclusive supervisory jurisdiction over all

---

<sup>2</sup>The Del PSC authorized its Executive Director to submit these comments by resolution passed at its December 14, 1999 public meeting.

<sup>3</sup>That reference to "state law" in section 214(e)(6) suggests that when the Commission exercises its authority to designate an ETC to serve an area where a state-designated ETC also serves, the Commission should ensure comparability between the obligations borne by, and the support available to, the state- and FCC- designated ETCs. Such equality between state and federally designated ETCs would be consistent with the overall thrust of section 214(e) to foster a competitive, multi-carrier environment for ensuring universal service.

“public utilities,” including those offering telecommunications services. Del. Code Ann., tit. 26 § 201(a) (1989). However, since 1986, the Delaware General Assembly has excluded from such definition of “public utility” those “telephone services provided by cellular technology, or by domestic public land mobile radio service.” Del. C. Ann., tit. 26 § 102(2) (1989). In addition, the Delaware legislature has historically specifically announced that the Del PSC “shall have no jurisdiction over the operation of telephone service provided by cellular technology or by domestic public land mobile radio service or over the rates to be charged for such service or over property, property rights, equipment or facilities employed in such service.” Del C. Ann., tit. 26, § 202(c), *as amended by* 72 Del. Laws ch. 163 (July 16, 1999). Indeed, recently in July, 1999, the General Assembly rephrased this subsection to emphasize that the jurisdictional exclusion applies to all cellular telephone service, whether fixed or mobile. 72 Del. Laws ch. 163, Synopsis (July 16, 1999). In light of the “public utility” definition and the specific jurisdictional exclusion, the Del PSC has consistently taken the position that it has not been granted regulatory jurisdiction over any aspect of telephone service provided by mobile, and now fixed, cellular wireless technology.<sup>4</sup> Accordingly, the Del PSC does not currently exercise any form

---

<sup>4</sup>The Delaware legislature has specifically granted the Del PSC the authority to take such actions as may be permitted or required of a “state commission” under the Telecommunications Act of 1996. *See* Del. C. Ann., tit. 26 § 703(4) (1998 Supp.). Looking to that provision, the Del PSC has - while expressing reservations about its jurisdiction -

of supervisory jurisdiction over wireless CMRS providers, including Cellco.

2. The Del PSC's Actions Related to ETC Designation and Lifeline and Link Up Support

In December, 1997, the Del PSC adopted interim guidelines to govern how it would review an application by a carrier seeking to be designated an ETC under section 214(e) and what obligations would be borne by such an ETC. PSC Order No. 4679 (Dec. 16, 1997). Under those guidelines, an ETC must: (1) provide the federally-defined supported services; (2) provide Lifeline and Link Up support; and (3) publish annually, and include in any distributed directory, notice of the availability of supported services and Lifeline and Link Up discounts. In a companion order, the Del PSC authorized a Delaware ETC to offer Lifeline and Link Up support to low income subscribers. PSC Order No. 4684 (Dec. 16, 1997). Under this new Lifeline program,<sup>5</sup> each ETC may credit against its normal tariffed charges for supported services the additional federal baseline amount of \$1.75 (in addition to the mandatory waiver of the \$3.50 SLC charge).<sup>6</sup> Subscriber eligibility for the Lifeline program,

---

approved (under 47 U.S.C. § 252(e)) *fully negotiated* interconnection agreements between cellular wireless carriers (including Cellco) and the incumbent LEC, Bell Atlantic-Delaware, Inc. The Del PSC has never been called upon to resolve the reach of the authority granted by section 703(4), or that section's interplay with the historical exemption from state oversight granted to cellular providers.

<sup>5</sup>Previously, only Link Up support had been available in Delaware.

<sup>6</sup>47 C.F.R. § 54.403(a).

and the Link Up program, is governed by the federal default criteria.<sup>7</sup> The Del PSC did not authorize any state matching funds in order to obtain any further federal Lifeline support. Each ETC must file tariffs setting forth its implementation of the Lifeline and Link Up programs.

At the request of Bell Atlantic-Delaware, Inc. ("BA-Del"), the Del PSC designated that incumbent LEC as an ETC for the service area encompassing all of Delaware. PSC Order No. 4680 (Dec. 16, 1997). No other carrier has sought ETC designation.<sup>8</sup> BA-Del tariffed its Lifeline and Link Up services consistent with the Del PSC's prior Order. Under that tariff, BA-Del offers a package of "Lifeline Services" subject to the authorized Lifeline discount, as well as a "Link Up America" connection discount.<sup>9</sup> Currently, BA-Del does not receive any federal high cost support. In addition, under the Commission's recent High Cost Support Order, an ETC in Delaware (including BA-Del) will not, going forward, receive any federal high cost support monies.<sup>10</sup>

To the extent that the Commission believes that carriers designated by it under section 214(e)(6) should be treated comparably to those designated by a state

---

<sup>7</sup>47 C.F.R. §§ 54.409(b), 54.415(b).

<sup>8</sup>No rural telephone companies operate in Delaware.

<sup>9</sup>See Tariff of BA-Del, P.S.C.-Del., No. 1, Sections. 20D, 20E.

<sup>10</sup>See Spreadsheet Accompanying DA 99-2399 (rel. Nov. 2, 1999).

commission for the same areas,<sup>11</sup> the Del PSC believes that the federal support should be provided to Cellco on the same basis as such support now goes to BA-Del for supported services. However, given the limitations on the Del PSC's jurisdiction over cellular carriers, the Commission, not the Del PSC, must be the entity to not only supervise and enforce the proper application of such support by Cellco, but also to superintend the advertisement requirements required by 47 U.S.C. § 214(e)(1)(B).

3. A Precautionary Note

The Del PSC does sound one precautionary note. Candidly, it is one struck based on possibilities not probabilities. But it is one with the possibility to create discord in the case of split FCC/State commission jurisdiction over ETC designation and supervision for the same service area. In section 214(e), Congress extended its paradigm of competition to the goal of ensuring universal service. Thus, a state commission, or this Commission, must, upon request, designate an additional qualified carrier as an ETC even if the area is already served by another ETC-designated carrier. 47 U.S.C. § 214(e)(2), (6).<sup>12</sup> Conversely, a state commission must seemingly permit a carrier to relinquish its ETC designation if its service area will

---

<sup>11</sup>*Cf. In the Matter of Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Area*, Further NPRM, FCC 99-204 at ¶ 69 (rel. Sept. 3, 1999) (tentatively concluding that FCC-designated ETCs should qualify for additional \$1.75 federal baseline Lifeline support).

<sup>12</sup>*See also* 47 C.F.R. § 54.201(b), (c).

continue to be served by another ETC. 47 U.S.C. § 214(e)(4).<sup>13</sup> The Del PSC does not necessarily object to the Congressional vision to look to competition to help ensure that all Americans have telephone access. Similarly, the Del PSC does not necessarily object to the designation of wireless carriers as ETCs. The choice by wireless providers to offer services to all those within larger service areas may exert competitive pressures on the prices charged by all local exchange carriers. However, the Del PSC cautions that the above statutory scheme can be read to lead to a scenario where this Commission's designation of a wireless carrier as an ETC for an entire State would allow a pervasive wireline carrier, such as an incumbent LEC, to then withdraw as an ETC.<sup>14</sup> In such case, under section 214(e)(4), the state commission would apparently be powerless to prevent such an exit. Yet, if that occurred, the state commission would then find that universal service obligations within its state borders would pass to an entity over which the state commission could not exercise any regulatory authority. Moreover, such scenario might hamper, rather than advance, universal service goals. While wireless service is becoming more popular, those on the margin of telephone subscription may not readily take to the wireless service

---

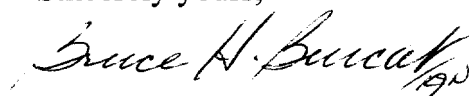
<sup>13</sup>See also 47 C.F.R. § 54.205.

<sup>14</sup>In a state where no federal high cost support will accrue to the wireline carrier and the Lifeline support amounts are low, a carrier may decide that the ETC designation is not worth its administrative costs. However, it must be emphasized that BA-Del has informed the Del PSC that the ILEC does not have any intention to relinquish its present ETC designation if the Commission would grant Celco's application.

provided by the remaining ETC. In addition, even in those situations where a consumer might feel comfortable with the wireless technology, unless the Link-Up program is expanded to cover the costs of the wireless telephone and other connection fees, many low-income consumers might be unable to meet the current high "entry" costs for the ETC's wireless service. In the near future, wireless technology may be viewed as an equivalent substitute for the traditional wireline network in all areas, and today wireless carriers might be appropriately designated as a *supplementary* ETC. But until wireless services are easily accepted by the public (and particularly by those at the margins of penetration) and until the prices for wireless service drop to levels akin to present regulated wireline rates, the Commission, in interpreting and exercising its authority under section 214(e)(6), should ensure that a wireless carrier does not become the sole ETC for a *statewide* service area.

The Del PSC hopes that the Commission finds these comments helpful.

Sincerely yours,

A handwritten signature in cursive script, reading "Bruce H. Burcat", followed by a small mark that appears to be "1999".

Bruce H. Burcat  
Executive Director

BHB/crc  
Copies (4)



Magalie R. Salas, Esq.  
Secretary, Federal Communications Commission

Page 9  
December 15, 1999

cc: Sheryl Todd (3 copies)  
Accounting Policy Div., CCB, FCC  
International Transcription Services, Inc. (1 copy & diskette)  
The Chairman and Members of the Delaware Public Service Commission  
S. Mark Tuller, Esq. (1 copy)  
Counsel for Cellco Partnership

File (PSC Reg. Dckt. No. 48)